



**U.S. Department of Justice**

*United States Attorney  
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August 6, 2018

By ECF

Honorable Valerie E. Caproni  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Natural Resources Defense Council, Inc., et al. v. U.S. Department of the Interior, et al.*, 18 Civ. 4596 (VEC)

*National Audubon Society, et al. v. U.S. Department of the Interior, et al.*,  
18 Civ. 4601 (VEC)

Dear Judge Caproni:

The parties in the above-captioned cases jointly submit this letter requesting an adjournment of the briefing schedule for Defendants' motions to dismiss in order to incorporate a related forthcoming lawsuit that the parties expect to be filed by one or more states.

Plaintiffs in these cases challenge the December 22, 2017 legal opinion issued by the Office of the Solicitor of the U.S. Department of the Interior interpreting the Migratory Bird Treaty Act. Defendants intend to file a combined memorandum of law in support of their motions to dismiss both cases. *See* Dkt. No. 19 (18 Civ. 4596); Dkt. No. 22 (18 Civ. 4601).

At the joint conference for these matters on July 13, 2018, the parties raised with the Court the possibility that a third lawsuit challenging the same legal opinion would be filed by one or more states. Based on subsequent discussions with the New York State Office of the Attorney General, the parties expect that one or more states will be filing such a lawsuit, challenging the legal opinion on grounds similar to those asserted by Plaintiffs in the pending cases. While the parties understand that the states are still completing their internal approval processes, it appears likely that one or more states will file a lawsuit within a matter of weeks.

As discussed at the initial conference, the parties agree that—in light of the expected new complaint by one or more states—it would serve the interests of judicial efficiency and economy to adjourn the existing briefing schedule so that Defendants can file a single combined memorandum of law in support of their motions to dismiss all three complaints. Such an adjournment would avoid burdening the Court and the parties with substantially similar motions and briefs in the various cases.

The parties therefore respectfully request that the Court adjourn the existing briefing schedule pending the filing of the anticipated third complaint by one or more states. The parties in all three cases would then submit a proposed revised briefing schedule for Defendants'

motions to dismiss within 10 days of service of the new complaint on the U.S. Attorney's Office for the Southern District of New York. If a new complaint is not filed by September 7, 2018, the parties to the existing lawsuit will file a status report apprising the Court of the situation and proposing next steps in these proceedings.

Defendants' motions to dismiss the above-captioned cases are currently due August 17, 2018. This is the parties' first request for an adjournment of the briefing schedule; Defendants previously requested and received a brief 10-day extension of their original deadline to respond to the complaints.

We thank the Court for its consideration of and attention to this matter.

Respectfully submitted,

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